

File-002528  
LB-ADAG

Court File No. CV-16- 23260

MINISTER OF JUSTICE  
MINISTRE DE LA JUSTICE  
**ONTARIO**  
**SUPERIOR COURT OF JUSTICE** 9 25

110008

BETWEEN:

RECEIVED/REÇU

CEN BIOTECH INC.

Plaintiff

and

ATTORNEY GENERAL OF CANADA

Defendant

**INFORMATION FOR COURT USE**

1. This proceeding is an: ☒ action ☐ application  
2. Has it been commenced under the *Class Proceedings Act*, 1992? ☐ yes ☒ no  
3. If the proceeding is an action, does Rule 76 (Simplified Procedure) apply? ☐ yes ☒ no

NOTE: Subject to the exceptions found in subrule 76.01(1), it is  
MANDATORY to proceed under Rule 76 for all cases in which the  
money amount claimed or the value of real or personal property claimed  
is \$100,000 or less.

4. The Claim in this proceeding (action or application) is in respect of:

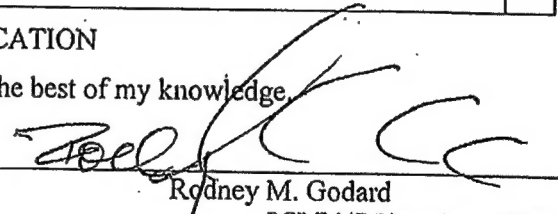
(Select the one item that best describes the nature of the main claim in the proceeding.)

Bankruptcy or insolvency law	<input type="checkbox"/>	Motor vehicle accident	<input type="checkbox"/>
Collection of liquidated debt	<input type="checkbox"/>	Municipal law	<input type="checkbox"/>
Constitutional law	<input type="checkbox"/>	Partnership law	<input type="checkbox"/>
Construction law (other than construction lien)	<input type="checkbox"/>	Personal property security	<input type="checkbox"/>
Construction lien	<input type="checkbox"/>	Product liability	<input type="checkbox"/>
Contract law	<input type="checkbox"/>	Professional malpractice (other than medical)	<input type="checkbox"/>
Corporate law	<input type="checkbox"/>	Real property (including leases; excluding mortgage or charge)	<input type="checkbox"/>
Defamation	<input type="checkbox"/>	Tort: economic injury (other than from medical or professional malpractice)	<input checked="" type="checkbox"/>
Employment or labour law	<input type="checkbox"/>	Tort: personal injury (other than from motor vehicle accident)	<input type="checkbox"/>
Intellectual property law	<input type="checkbox"/>	Trusts, fiduciary duty	<input type="checkbox"/>
Judicial review	<input type="checkbox"/>	Wills, estates	<input type="checkbox"/>
Medical malpractice	<input type="checkbox"/>		
Mortgage or charge	<input type="checkbox"/>		

**CERTIFICATION**

I certify that the above information is correct, to the best of my knowledge.

Date: January 25, 2016

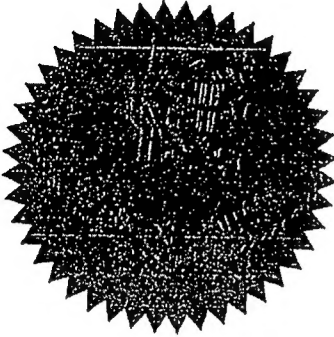
  
Rodney M. Godard

RCP-E 14F (November 1, 2008)

Court File No. CV-16- 23260

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:



CEN BIOTECH INC.

Plaintiff

and

ATTORNEY GENERAL OF CANADA

Defendant

**STATEMENT OF CLAIM**

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

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IF YOU PAY THE PLAINTIFF'S CLAIM, and \$5,000 for costs, within the time for serving and filing your Statement of Defence you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400 for costs and have the costs assessed by the Court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date FEB 01 2016

Issued by

*Rosemary L. Marz*  
Local Registrar

Address of 245 Windsor Avenue  
court office: Windsor ON N9A 1J2

TO: Attorney General of Canada  
Office of the Deputy Attorney General of Canada  
284 Wellington Street  
Ottawa, Ontario K1A 0H8

## CLAIM

1. The Plaintiff claims:

- (a) damages for detrimental reliance in the sum of FIFTEEN MILLION DOLLARS (\$15,000,000.00);
- (b) damages for pure economic loss in an undetermined amount;
- (c) prejudgment and postjudgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and section 31 of the *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50, as amended;
- (d) the costs of this proceeding on a substantial indemnity basis, plus all applicable taxes; and
- (e) such further and other Relief as to this Honourable Court may seem just.

### *The Parties*

2. The Plaintiff, CEN Biotech Inc. ("CEN"), is a federally incorporated corporation that is headquartered in the Town of Lakeshore in the Province of Ontario.
3. The Defendant, the AG, is the representative of the Federal Crown and the Minister of Health. The Minister of Health delegates administrative and decision making powers to Health Canada to issue medicinal marihuana production licenses pursuant to the provisions of the *Marihuana for Medicinal Purposes Regulations*, SOR/2013-119 (the "MMPR"). Health Canada acted as the Minister of Health's delegate at all material times.

### ***Background***

4. CEN was incorporated with the intention of becoming a licensed producer of medicinal marihuana pursuant to the provisions of the *MMPR*.

5. CEN leased the agriculturally zoned property located at 20 North Rear Road, Lakeshore, Ontario, which it intended to use as a medicinal marihuana production farm (the "Site"). The Site encompassed one building. Jim Shaban was at all relevant times the legal owner of the Site. Production of medical marihuana was a permitted activity under the agricultural zoning applicable to the Site.

### ***The Application***

6. On or around September 13, 2013, CEN submitted an application to become a licensed producer of medicinal marihuana to Health Canada. The application included, *inter alia*, a request for a license to produce up to 600,000 kilograms of medicinal marihuana per year.

7. The application process is publicized on Health Canada's website at [http://www.hs-sc.gc.ca/dhp-mps/marihuana/info/application\\_steps-etapes\\_lp-pa-eng.php](http://www.hs-sc.gc.ca/dhp-mps/marihuana/info/application_steps-etapes_lp-pa-eng.php), which sets out the seven steps sequential process for becoming a licensed producer. Attached at Schedule "A" is a copy of the Health Canada website listing the application process steps for becoming a licensed producer that remained on this website throughout the relevant time frame.

8. The mandatory security clearances of key personnel is listed as step 3 of the application process ("Step 3"). Step 3 specifies that applications will only advance to the review stage once the security clearances are complete and that until Health Canada receives the security check results, there will be no further communication from Health Canada.

9. The review of the application, including the assessment of security plans, is listed as step 4 ("Step 4"). The issuing of a "ready to build letter", which informs the applicant that if the proposed site is built to the specifications outlined in the application the physical security measures would meet the requirements, is listed as step 5 ("Step 5"). The penultimate step before licensing, which involves a pre-licence inspection of the site, is listed as step 6 ("Step 6").

*The Ready to Build Letter*

10. In response to CEN's application, on or around November 26, 2013, Health Canada issued a "ready to build letter" to CEN (the "Ready to Build Letter") advising it, *inter alia*, that CEN's proposed security system, if implemented, would meet the security requirements. Through this, Health Canada expressly confirmed that the assessment of security plans, as listed in Step 4, had been completed.

11. The Ready to Build Letter also requested that CEN advise Health Canada once it completes the security installation and the electronic security is functional, at which time Health Canada would arrange for a pre-licence inspection.

12. Through the Ready to Build Letter, Health Canada was negligent or reckless in directing CEN to proceed through Step 4 and Step 5 of the application process, if CEN's personnel had not obtained security clearance under Step 3.

*The Expedited Build Out*

13. On or around November 29, 2013, CEN received correspondence from a representative of Health Canada who enquired when the Site would be ready for the pre-licence inspection, ie. Step 6.

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14. On or around December 7, 2013, CEN advised the Health Canada representative that the anticipated date of completion of the Site would be in or around April, 2013.
15. On or around December 13, 2013, a representative of Health Canada contacted a representative of CEN requesting that the construction of the Site be expedited. The Health Canada representative also advised that CEN would be provided the licence to produce medicinal marihuana upon completing the expedited build out.
16. Although CEN's application contemplated construction of a new building at the Site, CEN relied on the representations of the Health Canada representative and complied with Health Canada's request to retrofit the existing building at the Site on an accelerated basis.
17. CEN relied on the Ready to Build Letter and further the expedited build out as requested by Health Canada and incurred expenses in the approximate amount of fifteen million dollars (\$15,000,000.00) to carry out the expedited build out as requested by Health Canada.
18. Had Health Canada followed the application process and satisfactorily completed the security clearance for key personnel under Step 3, CEN would not have incurred the expense of the build out.

#### *The Pre-Licence Inspection*

19. On or around March 28, 2014, CEN representatives contacted Health Canada with regards to the pre-licence inspection provided for in Step 6.
20. On or around that same day, a representative of Health Canada requested confirmation of the readiness of the Site and advised CEN that, *inter alia*, the issuance of a licence is contingent

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upon the security clearances of all key personnel, which was still in process at the time. This process is contradictory to the application process described on Health Canada's website which specifies at Step 3 that there will be no further correspondence from Health Canada until the receipt of the security clearances and notes that Step 4, the review of the application, will not proceed until the security clearances are obtained.

21. At that point, CEN had already incurred expenses in the approximate amount of \$15,000,000 in reliance upon the Ready to Build Letter and the later direction to pursue an expedited build out.
22. On or around April 22, 2014, CEN advised Health Canada that the Site would ready for the pre-licence inspection as of April 28, 2014.
23. On or around April 29, 2014, CEN was advised by a Health Canada representative that the pre-licensing inspection could only be conducted upon receipt of the security clearances which were still pending on that date.
24. On or around June 5, 2014, a Health Canada representative advised CEN that Health Canada had recently received the results of the security checks and that Health Canada would be moving forward with the final review of the application.
25. On or around July 14, 2014, at the request of Health Canada, CEN confirmed the readiness of the Site for the pre-licence inspection.
26. On or around July 31, 2014, the pre-licence inspection was conducted. The pre-licence inspection identified some minor deficiencies, all of which were rectified and addressed by CEN on around August 18, 2014.



*Post Pre-Licence Inspection*

27. From June 11, 2014 to February, 2015, Health Canada officials requested, and CEN provided, further information regarding the application. These requests included, but were not limited to, information regarding the following:

- (a) quality assurance and quality control;
- (b) standard operating procedures;
- (c) destruction of cannabis;
- (d) location of cannabis plants in the facility;
- (e) Electrical Standards inspection;
- (f) good production practices;
- (g) recall procedures;
- (h) record keeping;
- (i) business and forecasts;
- (j) municipal zoning by-laws; and
- (k) limitation of production.

28. During that time, Health Canada did not request any further information from CEN regarding the security clearances nor did it make any inquiries regarding security concerns of any individuals involved with CEN.

*The Refusal*

29. On or around February 13, 2015, Health Canada wrote to CEN advising it that the Minister of Health intended to refuse to grant a producer licence to CEN. Health Canada explained that the basis for the refusal was the unsuccessful security clearance of Bahige Chaaban ("Chaaban"), one of the key individuals of CEN's management team.
30. On or around March 11, 2015, Health Canada advised CEN that the Minister of Health refused to grant a licence for the production of medicinal marihuana. The basis for the refusal was confirmed as the denial of a security clearance to Chaaban.
31. CEN was prepared, and proposed, to remove Chaaban from its management team such that he would have no involvement in its operation. CEN is still prepared to remove Chaaban from its management team and active involvement in its operations.
32. Health Canada nevertheless refused CEN's proposal and upheld its decision to refuse a medical marihuana production licence to CEN.
33. By separate correspondence, on or around March 11, 2015, Health Canada provided Chaaban the following six grounds for the refusal of the security clearance:
- (a) misleading Health Canada regarding municipal approvals;
  - (b) misleading the public regarding Health Canada licensing approvals;
  - (c) overinflated proposal for production of medicinal marihuana;
  - (d) the use of pseudonym to communicate information;

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- (e) different signatures on documents; and
- (f) posting of the Pre-Licence Inspection Report online.

*The Claim*

- 34. The application process gave rise to a special relationship between CEN and Health Canada, whereby Health Canada owed CEN a duty of care in dealing with its application.
- 35. As above pleaded, Health Canada made numerous representations to CEN throughout the application process to the effect that CEN would be provided a licence to produce medicinal marihuana. Health Canada was negligent or reckless in making those representations.
- 36. By relying on Health Canada's representations and at the explicit request of Health Canada, CEN expended approximately fifteen million dollars (\$15,000,000.00) to carry out the expedited build out of the Site.
- 37. CEN claims damages in the amount of fifteen million dollars (\$15,000,000.00) on account of the losses it incurred as a result of its detrimental reliance on Health Canada's misrepresentations.
- 38. CEN further claims damages in an undetermined amount for pure economic loss suffered by CEN as a result of its misrepresentations. Particulars will be provided at or before trial.
- 39. The Plaintiff proposes that this action be tried in the City of Windsor in the County of Essex.

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*(Date of issue)*

**FEB 01 2016**

**KIRWIN PARTNERS LLP**

423 Pelissier Street

Windsor ON N9A 4L2

**Rodney M. Godard**

LSUC# 18062F

Telephone: 519.255.9840 ext. 112

Facsimile: 519.255.1413

Email:

RGodard@KIRWINPARTNERS.COM

Lawyers for the Plaintiff

RCP-E 14A (June 9, 2014)

Appina Schedule "A"



Health Canada  
Santé Canada

Canada

Home > Drugs & Health Products > Medical Use of Marijuana

## Drugs and Health Products

### Application Process Steps for Becoming a Licensed Producer

#### Step 1: Preliminary Screening

When an application is received, it undergoes a preliminary screening for completeness. If an application is not complete, it will be returned. If an application is complete, it will be assigned an application number. The application number means that the application has completed the preliminary screening.

#### Step 2: Enhanced Screening

Once an application has been assigned an application number, it will be reviewed to ensure: that the location of the proposed site does not pose a risk to public health, safety and security; that the proposed security measures outlined in the application meet the requirements of the MMPR; and the proposed quality assurance person has the appropriate credentials to meet the good production requirements outlined in Division 4 of the MMPR. As a reminder, it is the responsibility of the applicant to ensure that they are in compliance with all applicable provincial, territorial, and municipal legislation, regulations and bylaws, including zoning restrictions.

#### Step 3: Security Clearance

Once the screening of an application is complete, the security clearance forms for key personnel will be sent for processing. The time required to conduct mandatory security checks varies with each application. Applicants should expect that security clearances will take several months at a minimum. Health Canada and the RCMP are not able to provide updates on the status of security checks.

Applications will only advance to the review stage once the security clearances for the key personnel are completed. Please note that until such a time as Health Canada receives the results of the security checks, there will be no further communication from Health Canada.

#### Step 4: Review

Once all security clearances are obtained, an application will be thoroughly reviewed to validate the information provided. Given the extensive review process, applicants should anticipate communicating with the Office of Controlled Substances multiple times to provide clarifications on the application.

Physical security plans will be reviewed and assessed in detail at this stage. Please note that applicants must meet a minimum of a level 7 to be considered for a licence. Information on the physical security directive can be found on the [Health Canada website](#).

#### Step 5: Ready to build letter (if required by applicant)

Once the review of the application has been completed and it is confirmed that all requirements in the MMPR are met, applicants may request that Health Canada issue a "ready to build letter". The "ready to build letter" is a notice informing the applicant that, if the licensed producer's site is built to the specifications outlined in the application that the physical security measures would meet the requirements of the MMPR. The "ready to build letter" is not a guarantee that a licence will be

Application Process Steps in Obtaining a Licence to Produce

ed. The issuance of a licence under the MMPR is dependent upon the completion of a satisfactory inspection and is contingent on all key personnel identified in your application receiving the security clearance required under the MMPR.

### Step 6: Pre-licence inspection

Upon confirmation from the applicant that the site has been fully built and security measures are in place, a pre-licence inspection will be scheduled. If any deficiencies are identified, they will be communicated to the applicant and must be addressed prior to a licence being issued.

### Step 7: Licensing

Once it has been confirmed through the pre-licence inspection that the applicant meets all the requirements of the MMPR, a licence will be issued.

Health Canada has introduced a staged process for the issuance of licences. Applicants will first be issued a licence to produce only. This will enable Health Canada inspectors to confirm that the first batch of dried marijuana produced meets the good production practices and record keeping requirements outlined in the MMPR. It also allows Health Canada to verify the test results of the dried marijuana (e.g. for microbial and chemical contaminants) to ensure that the dried marijuana meets all quality control requirements before it is made available for sale.

### Changes to Applications

Any changes to your application (e.g. changes in key personnel, physical security measures) will result in additional processing time. If you wish to change your proposed site, you will be required to withdraw your application and resubmit your application based on the new site.

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Date Modified: 2014-08-27

CEN BIOTECH INC.  
Plaintiff

-and- IMD HEALTH CANADA CORPORATION et al.  
Defendants

Court File No. CV-16- 23260

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

**STATEMENT OF CLAIM**

**KIRWIN PARTNERS LLP**  
423 Pelissier Street  
Windsor ON N9A 4L2

**RODNEY M. GODARD**  
LSUC # 18062F  
Telephone: 519.255.9840 ext. 112  
Facsimile: 519.255.1413  
Email: RGodard@KIRWINPARTNERS.COM

**Lawyers for the Plaintiff**  
File Number: 101677

RCP-E 4C (July 1, 2007)

FORM 18B – NOTICE OF INTENT TO DEFEND  
Rules of Civil Procedure, (Rule 18.02)

Court File No.: CV-16-23260

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**CEN BIOTECH INC.**

**Plaintiff**

**and**

**ATTORNEY GENERAL OF CANADA**

**Defendant**

**NOTICE OF INTENT TO DEFEND**

The Defendant intends to defend this action.

February 16, 2016

Department of Justice Canada  
Ontario Regional Office  
The Exchange Tower  
130 King Street West  
Suite 3400, Box 36  
Toronto, Ontario M5X 1K6

Per: Peter Southey / John Lucki  
Tel.: (416) 973-2240 / (416) 973-5402  
Fax: (416) 973-0809  
File: 8434825

Lawyers for the Defendant



- 2 -

TO:

KIRWIN PARTNERS LLP  
423 Pelissier Street  
Windsor, Ontario  
N9A 4L2

Rodney M. Godard

Tel.: (519) 255-9840 Ext. 112

Fax: (519) 255-1413

Lawyers for the Plaintiff

Court File No.: CV-16-23260

**CEN BIOTECH INC.**

**AND**

**ATTORNEY GENERAL OF CANADA**

Plaintiff

Defendant

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Windsor

**NOTICE OF INTENT TO DEFEND**

Department of Justice  
Ontario Regional Office  
The Exchange Tower  
130 King Street West  
Suite 3400, Box 36  
Toronto, Ontario  
M5X 1K6

Per: Peter Southey / John Lucki  
Tel.: (416) 973-2240 / (416) 973-5402  
Fax: (416) 973-0809  
File: 8434825

Law Society No.: 25138J

Lawyers for the Defendant

Court File No. / Numéro du dossier de la cour : CV-16-00023260-0000

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COUR SUPÉRIEURE DE JUSTICE

BETWEEN:  
ENTRE:

CEN BIOTECH INC.

Plaintiff  
Demandeur

and / et

ATTORNEY GENERAL OF CANADA

Defendant  
Défendeur

NOTICE OF REQUIREMENT TO MEDIATE  
AVIS DE MÉDIATION OBLIGATOIRE

Pursuant to Rule 24.1.09(1), the parties to this proceeding are required to attend a mediation session within 180 days after the first defence has been filed, unless the court orders otherwise. The first defence was filed on  
*Conformément à la règle 24.1.09(1), les parties à l'instance sont tenues d'assister à une séance de médiation dans les 180 jours qui suivent le dépôt de la première défense, sauf ordonnance contraire du tribunal. La première défense a été déposée le*

18-FEB-2016

(Date)

To prevent the assignment of mediator, the parties to this proceeding are required to file Notice of Name of Mediator and Date of Session (Form 24.1(A)) with the court within 180 days after the filing of the first defence.

*Afin d'éviter qu'un médiateur soit affecté au dossier, les parties à cette instance sont tenues de déposer un avis du nom du médiateur et de la date de la séance (formule 24.1(A)) auprès du tribunal, dans les 180 jours qui suivent le dépôt de la première défense.*

The parties may select a mediator from the approved list of mediators, or on consent may select a mediator who is not named on the list. The list is available on the Ministry of the Attorney General website at

[www.attorneygeneral.jus.gov.on.ca](http://www.attorneygeneral.jus.gov.on.ca).

*Les parties peuvent choisir un médiateur sur la liste des médiateurs approuvés ou elles peuvent consentir à choisir un médiateur qui ne figure pas sur cette liste. La liste est consultable sur le site Web du ministère du Procureur général, à [www.attorneygeneral.jus.gov.on.ca](http://www.attorneygeneral.jus.gov.on.ca).*

If the mediation co-ordinator does not, within 180 days from the date of this notice, receive a consent or an order extending the time for the completion of a mediation session, a Form 24.1A notice, a mediator's report or a notice that the action has been settled, he or she shall immediately assign a mediator from the list who will fix a place, date and time for the mediation session and notify the parties at least 20 days before that date.

*Si le coordonnateur de la médiation ne reçoit pas, dans les 180 jours qui suivent la date du présent avis, une ordonnance prolongeant le délai prescrit pour la tenue d'une séance de médiation, un avis sur la formule 24.1A, le rapport du médiateur ou un avis de règlement de l'action, il désignera immédiatement un médiateur dont le nom figure sur la liste qui fixera les date, heure et lieu de la séance de médiation et en avisera les parties au moins 20 jours avant cette date.*

The date fixed for the mediation session shall be within 90 days after the appointment of the mediator unless the court orders otherwise.

*La médiation doit avoir lieu dans les 90 jours qui suivent la nomination du médiateur sous réserve d'une ordonnance contraire du tribunal.*

**NOTICE OF REQUIREMENT TO MEDIATE  
AVIS DE MÉDIATION OBLIGATOIRE**

CV-16-00023260-0000

*Court File No./No du dossier de greffe*

Please notify the Mediation Office immediately in writing if this proceeding:

*Veillez aviser immédiatement le Bureau de la médiation, par écrit, si l'instance répond à l'un ou l'autre des critères suivants :*

- (a) is an action to which Rule 75.1 (Mandatory Mediation – Estates, Trusts and Substitute Decisions) applies;  
*elle est une action à laquelle la Règle 75.1 s'applique (médiation obligatoire – successions, fiducies et décisions au nom d'autrui);*
- (b) is in relation to a matter that was the subject of a mediation under section 258.6 of the Insurance Act, and the mediation was conducted less than a year before the delivery of the first defence, as such actions are exempt from Rule 24.1;  
*elle se rapporte à une affaire qui fait l'objet d'une médiation en vertu de l'article 258.6 de la Loi sur les assurances et si la médiation a eu lieu moins d'une année avant le dépôt de la première défense, auquel cas ces actions sont exemptées de la règle 24.1;*
- (c) is an action placed on the Commercial List;  
*elle est une action inscrite au rôle commercial;*
- (d) is an action under Rule 64 (Mortgage Actions);  
*elle est une action relevant de la Règle 64 (actions hypothécaires);*
- (e) is an action under the Construction Lien Act, except a trust claim;  
*elle est une action en vertu de la Loi sur le privilège dans l'industrie de la construction, sauf une action relative à la fiducie;*
- (f) is an action under the Bankruptcy and Insolvency Act (Canada);  
*elle est une action en vertu de la Loi sur la faillite et l'insolvabilité (Canada);*
- (g) is an action that has been certified as a Class Proceeding under the Class Proceedings Act 1992; or  
*elle est une action qui a été certifiée comme un recours collectif en vertu de la Loi de 1992 sur les recours collectifs;*
- (h) has settled so that no further action need be taken.  
*elle a été réglée et elle ne nécessite plus aucune mesure.*

Date: 19-FEB-2016

Fait le:

Mediation Office  
*Bureau de la médiation*

Address of court office: Windsor  
*Adresse du greffe: 245 Windsor Av  
Windsor ON N9A 1J2*

TO/À : PETER SOUTHEY  
DEPARTMENT JUSTICE, BUSINESS LAW DIVISION  
ONTARIO REGIONAL OFFICE, THE EXCHANGE TOWER, 130 KING ST. W. SUITE 3400  
TORONTO ON CA M5X 1K6

Fax: (416)973-0809

Court File No. CV-16-23260

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**CEN BIOTECH INC.**

**Plaintiff**

**and**

**ATTORNEY GENERAL OF CANADA**

**Defendant**

**DEMAND FOR PARTICULARS  
AND REQUEST TO INSPECT DOCUMENTS**

The defendant, the Attorney General of Canada, requests particulars of the allegations contained in the statement of claim, and requests to inspect documents referred to in the statement of claim, as follows:

1. With respect to the allegation in paragraph 7 of the statement of claim that the contents of Schedule A of the statement of claim remained on Health Canada's website "throughout the relevant time",

a) please identify specifically what period of time is being referred to as "the relevant time";

b) please provide particulars identifying which representative(s) of the plaintiff are alleged to have reviewed the contents of Schedule A on Health Canada's web page, and when they are alleged to have seen reviewed such contents on Health Canada's web page.

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2. With respect to the allegations in paragraphs 15 – 16 of the statement of claim,

a) please identify the "representative of Health Canada" referred to in paragraph 15 and the "Health Canada representative" referred to in paragraph 16;

b) please identify the "representative of CEN" referred to in paragraph 15;

c) please advise how the representative of Health Canada is alleged to have "contacted" the representative of CEN, and whether such contact and communication was made in writing, or was oral;

d) if the alleged contact and communication referred to in paragraphs 15 and 16 was made in writing, please provide a copy of the document(s) representing the referenced written contact and communication;

e) if such contact and communication are alleged to have been oral, please provide full particulars of what the Health Canada representative is alleged to have said, and to whom, including:

(i) full particulars of all alleged statements characterized in paragraph 15 as "requesting that the construction of the Site be expedited";

(ii) full particulars of all alleged "representations" referred to in paragraph 16; and

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- (iii) full particulars of all alleged statements characterized in paragraph 16 as a "request to retrofit the existing building at the Site on an expedited basis".

3. With respect to paragraph 35 of the statement of claim, please provide full particulars of the alleged "numerous representations" said to have been made by Health Canada to CEN "throughout the application process", including full particulars with respect to the following:

- a) the dates upon which each such alleged representation was allegedly made;
- b) for each such alleged representation, the name(s) of the Health Canada representative(s) alleged to have made each particular representation;
- c) for each such alleged representation, the name(s) of the CEN representative(s) to whom each particular representation is alleged to have been made;
- d) how each alleged representation was made, and whether it was made orally or in writing;
- e) for each alleged oral representation, full particulars of what the Health Canada representative is alleged to have said; and
- f) for each alleged written representation, please provide a copy of the written representation.

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4. With respect to paragraphs 36 – 38 of the statement of claim, please advise whether the “representations” and “misrepresentations” referred to therein are the same as the “numerous representations” alleged in paragraph 35 of the statement of claim. If the “representations” and “misrepresentations” referred to in any of paragraphs 36 – 38 refer to any matters differing from or extending beyond the alleged “numerous representations” referred to in paragraph 35 of the statement of claim, please provide full particulars of such “representations” and “misrepresentations” in the same manner as requested for paragraph 35 of the statement of claim in request #3 immediately above.

July 27, 2016

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CEN BIOTECH INC

AND  
Plaintiff

Court File NO. CV-16-23260  
ATTORNEY GENERAL OF CANADA  
Defendant

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

**DEMAND FOR PARTICULARS  
AND REQUEST TO INSPECT  
DOCUMENTS**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**CEN BIOTECH INC.**

**Plaintiff**

**and**

**ATTORNEY GENERAL OF CANADA**

**Defendant**

**RESPONSE TO DEMAND FOR PARTICULARS**

The Plaintiff provides the following particulars in response to your demand for particulars:

1(a) The "relevant time" referred to in paragraph 7 of the Statement of Claim is from in or around August, 2014 to in or around June, 2015.

1(b) Bahige Bassem Chaaban, also known as Bill Chaaban ("Chaaban"), was the representative of the Plaintiff that reviewed the contents of Schedule A to the Statement of Claim on Health Canada's web page. He reviewed the webpage or its predecessor in or after August, 2013 and in or before May, 2015.

2(a) The Health Canada representative referred to in paragraphs 15 and 16 of the Statement of Claim was Jenny ("Jenny"). The Plaintiff does not have knowledge of Jenny's surname.

2(b) The representative of CEN referred to in paragraph 15 of the Statement of Claim was Chaaban.

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2(c) Jenny contacted Chaaban by email wherein she requested a telephone discussion.

2(d) Attached hereto as **Schedule "A"** is a copy of Jenny's email to Chaaban.

2(e)(i) On December 13, 2013, Jenny contacted Chaaban by telephone and advised him that Health Canada required the Plaintiff to expedite the building at the Site, as defined in paragraph 5 of the Statement of Claim, as Health Canada required an increase in the supply of medicinal marihuana from licensed producers. She also advised that Health Canada preferred not to wait for the completion of the building at the Site in accordance with the Plaintiff's application to become a licensed producer. Jenny, on behalf of Health Canada, requested for the Plaintiff's immediate build out of the existing building at the Site. Jenny further advised Chaaban that the Plaintiff would be provided a licence if it completed the expedited build out of the Site's existing building.

2(e)(ii) Through her statements to Chaaban, Jenny represented that the Plaintiff would be provided a license to produce medicinal marihuana immediately upon completion of the expedited build out of the existing building at the Site.

2(e)(iii) Please refer to answers for 2(e)(i) and (ii) above.

3 The "numerous representations" referred to in paragraph 35 of the Statement of Claim are particularized as follows:

- The Ready to Build Letter, as defined in paragraph 10 of the Statement of Claim, which was issued by Jacinthe David, on behalf of Health Canada, to the Plaintiff.  
Attached hereto as **Schedule "B"** is a copy of the Ready to Build Letter.

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- An email dated November 29, 2013 from Benoît P. Seguin, a representative of Health Canada, to Chaaban. Attached hereto as **Schedule "C"** is a copy of Benoît P. Seguin's email and Chaaban's response.
- A telephone discussion between Jenny and Chaaban on December 13, 2013, as particularized above at paragraphs 2(e)(i) and (ii). Attached hereto as **Schedule "D"** is a copy of Chaaban's email to Jenny of December 15, 2013 further to their telephone discussion of December 13, 2013.
- An email dated April 9, 2014 from the Licences and Permits Division Office of Controlled Substances of Health Canada to Chaaban. Attached hereto as **Schedule "E"** is a copy of the April 9, 2014 email.
- An email dated April 29, 2014 from Amal, a representative of Health Canada, to Chaaban. Attached hereto as **Schedule "F"** is a copy of an email chain which includes Amal's email of April 29, 2014.
- An email dated June 5, 2014 from the Licences and Permits Division Office of Controlled Substances of Health Canada to Chaaban. Attached hereto as **Schedule "G"** is a copy of the June 5, 2014 email.
- An email dated June 11, 2014 from Licences and Permits Division Office of Controlled Substances of Health Canada to Chaaban. Attached hereto as **Schedule "H"** is a copy of the June 11, 2014 email.
- The oral discussions between Ericka Tullock, a representative of Health Canada, and Chaaban on July 31, 2014 during the pre-licence inspection of the Site (the

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"Inspection"). During the Inspection, Ericka Tullock discussed three Site deficiencies which she has identified and which needed to be addressed by the Plaintiff but advised Chaaban that she was prepared to recommend that a producer licence be issued to the Plaintiff provided that the deficiencies were addressed. During the Inspection, Chaaban, Donald Strilchuck, and Jordan Elhalabi were present as representatives of the Plaintiff and Erika Tullock and Gord Davery attended as representatives of Health Canada.

- A Pre-Licence Inspection Report dated July 31, 2014 prepared by Erika Tullock on behalf of Health Canada and provided to the Plaintiff on or around September 24, 2014. Attached hereto as Schedule "I" is a copy of the Pre-Licence Inspection Report.
- A letter dated August 15, 2014 from Jacinthe David, a representative of Health Canada, to Chaaban. Attached hereto as Schedule "J" is a copy of the August 15, 2014 letter.
- A telephone discussion on August 18, 2014 between Ericka Tullock, a representative of Health Canada, and Chaaban, Jordan Elhalabi, Donald Strilchuck, Guy Pellett, Jim Shaban, and Joe Byrne, as representatives of the Plaintiff, wherein, Ericka Tullock advised that the removal of the "pod" from the grow room at the Site meant that the room was in compliance with the Division 3 security requirements of the *Marihuana for Medicinal Purposes Regulations*. Similarly, she also confirmed that the Site was also compliant after the Plaintiff addressed the

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deficiencies pertaining to the visual recording system, the installation of grates over the vault vent holes, and the installation of further outdoor lighting.

4. The "representations" and "misrepresentations" referred to in paragraphs 36 to 28 of the Statement of Claim are the same as the "numerous representations" referred to in paragraph 25 of the Statement of Claim.

October 27, 2016

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FORM 18A – STATEMENT OF DEFENCE  
Rules of Civil Procedure, (Rule 18.01)

Court File No. CV-16-23260

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

CEN BIOTECH INC.

Plaintiff

and

ATTORNEY GENERAL OF CANADA

Defendant

STATEMENT OF DEFENCE

1. The defendant, the Attorney General of Canada, admits the following allegations contained in the statement of claim:

a) with respect to paragraph 2, that the plaintiff, CEN Biotech Inc., is a federally incorporated corporation.

b) with respect to paragraph 3,

i) that the Minister of Health (the "Minister") presides over the Department of Health pursuant to the *Department of Health Act*, S.C. 1996, c.8, as amended;

ii) that the *Marihuana for Medical Purposes Regulations*, SOR/213-119 (the "MMP Regulations"), as in effect at the times relevant to this proceeding (although subsequently repealed) under the *Controlled Drugs and Substances Act*, SC 1996, c.8, conferred various powers upon the Minister, including

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various powers relating to the review and disposition of applications for, and the supervision and administration of, licenses to produce medical marihuana;

iii) that various such powers of the Minister may properly be exercised on behalf of the Minister by appropriately authorized representatives of the Department of Health ("Health Canada");

iv) that the Attorney General of Canada has the powers, duties and functions set out in the *Department of Justice Act*, RSC 1985, c.J-2, as amended.

c) with respect to paragraph 6 and 8,

i) that the plaintiff submitted an application to Health Canada in September 2013, and various additional and supplemental materials thereafter, seeking a licence under the MMP Regulations to become a licensed producer of medical marihuana based upon a set of specific facility, security and operational proposals set out in its application materials;

ii) that the plaintiff's licence application included applications for approval by the Minister of security clearances required under the MMP Regulations for prescribed representatives of the plaintiff, and that the plaintiff's license application expressly acknowledged that issuance of any license would be subject to, among other conditions, approval and issuance of necessary security clearances for prescribed company representatives, specifically including Mr. Bahige Chaaban ("Mr. Chaaban").

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- d) with respect to paragraph 10, that following initial review of the plaintiff's license application and related materials, a representative of Health Canada sent the plaintiff a letter dated November 26, 2013 advising, inter alia,
- i) that if the plaintiff's specific proposals with respect to the various cultivation, storage and security installations detailed in the plaintiff's license application materials were implemented as set out in those application materials, they would be in compliance with the MMP Regulations;
  - ii) that if and when the plaintiff completed its proposed security installations, Health Canada would arrange for a physical inspection to assess whether that implementation of the plaintiff's proposal was in compliance with MMP Regulations;
  - iii) that any approval and issuance of a licence to the plaintiff was subject not only to the plaintiff passing such subsequent inspection, but was further subject to prescribed personnel, specifically including Mr. Chaaban, being approved for and receiving security clearances from the Minister as expressly required under the MMP Regulations.
- e) paragraph 14, the first sentence of paragraph 20, paragraph 24 (subject to the clarification that the referenced "final review of the application" included review and decision regarding requested security clearances), and paragraph 25.
- f) with respect to paragraphs 24 and 26,

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- i) that on July 31, 2014, a representative of Health Canada conducted a physical inspection of the plaintiff's proposed facility, as actually implemented by the plaintiff;
  - ii) that the actual facility made available by the plaintiff for Health Canada inspection at that time bore little resemblance to the facility that was originally proposed by the plaintiff in support of its license application (and that was the subject of Health Canada's letter of November 26, 2013 to the plaintiff), and that the plaintiff's actual facility did not receive inspection approval;
  - iii) that at the time of this inspection on July 31, 2014, Health Canada had received certain inputs relevant to assessing the outstanding applications for security clearances, including responses to certain security check inquiries concerning Mr. Chaaban, but that no security clearances had yet been granted to anyone in relation to the plaintiff's license application.
- g) with respect to paragraph 27, that Health Canada continued to communicate with the plaintiff to follow up on various areas of deficiency or concern in relation to the plaintiff's license application, including the areas listed in paragraph 27.
- h) with respect to paragraphs 29 – 30 and 33,
- i) that by letters dated February 13, 2015, Health Canada advised the plaintiff and Mr. Chaaban of Health Canada's intention to decline granting Mr. Chaaban the security clearance required in respect of the plaintiff's licence

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application, and accordingly deny the plaintiff's license application, and gave the plaintiff and Mr. Chaaban 20 days to make submissions in that regard;

ii) that by letters dated March 11, 2015, Health Canada advised the plaintiff and Mr. Chaaban of Health Canada's decision to decline to grant Mr. Chaaban the security clearance required in respect of the plaintiff's license application, and therefore to deny the plaintiff's license application;

iii) that the reasons for Health Canada's notification of intending to decline granting Mr. Chaaban a security clearance, and then for declining that security clearance, generally related to the points listed in paragraph 33 of the statement of claim, but are more fully outlined in Health Canada's correspondence to the plaintiff and Mr. Chaaban at that time.

2. The defendant expressly denies the remaining allegations contained in the statement of claim, except as hereinafter expressly admitted.

3. The defendant specifically denies that any representatives of Health Canada made any representations, as alleged in the statement of claim or at all, to the effect that Mr. Chaaban would receive a security clearance, or that the plaintiff would receive a medical marihuana producer's license. Contrary to the allegations in the statement of claim, and as further outlined below, Health Canada repeatedly advised, and the plaintiff and its representatives fully understood at all times:

- 6 -

- a) that the requirements for applying for a license to produce medical marihuana were governed by the MMP Regulations;
- b) that among other licensing requirements under the MMP Regulations, it was a mandatory precondition that certain prescribed representatives of the plaintiff, including Mr. Chaaban, apply for and succeed in obtaining necessary security clearances;
- c) that the matter of required security clearances, including Mr. Chaaban's request for a necessary security clearance, remained outstanding while the plaintiff pursued its license application, as repeatedly confirmed in correspondence between the parties during the relevant period, until Mr. Chaaban's request for a security clearance was ultimately denied, as described in paragraph 1(h) above.

#### THE MMP REGULATIONS

- 4. Contrary to the plaintiff's claims, the requirements for applying for a license to produce medical marihuana under the MMP Regulations were at all times authoritatively governed, and were always understood by the plaintiff to be authoritatively governed, by the MMP Regulations.
- 5. The MMP Regulations expressly stipulated that, in addition to other requirements for obtaining and holding a medical marihuana producer's license, it was a necessary precondition that certain prescribed individuals involved in a license application be approved for and hold a security clearance from the Minister.

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The prescribed individuals required under the MMP Regulations to be approved for a security clearance included all directors and officers of a corporate applicant, as well as certain representatives of the corporate applicant designated by the applicant as the "Senior Person in Charge" and the "Responsible Person in Charge" under the Regulations.

6. The MMP Regulations expressly gave the Minister a broad discretionary power to consider and decide whether to grant any requested security clearances. Section 92 of the MMP Regulations included the following provisions in that regard:

*S 92 – The Minister may grant a security clearance if, in the opinion of the Minister, the information provided by the applicant and that resulting from the checks is reliable and is sufficient for the Minister to determine, by taking into account the following factors that the applicant does not pose an unacceptable risk to the integrity of the control of the production and distribution of cannabis under the Act and its regulations, including the risk of cannabis being diverted to an illicit market or use;*

...

*(c) whether there are reasonable grounds to suspect that the applicant is in a position in which there is a risk that they be induced to commit an act or to aid or abet any person to commit an act that might constitute a risk to the integrity of the control of the production and distribution of cannabis under the Act and its regulations, including the risk of cannabis being diverted to an illicit market or use;*  
[emphasis added]

7. The MMP Regulations similarly gave the Minister a broad discretionary power to review security clearances previously granted and to cancel security clearances having regard to the same considerations as outlined in Section 92 referred to above.

## THE PLAINTIFF'S APPLICATION FOR A LICENSE TO BECOME A PRODUCER OF MEDICAL MARIHUANA

8. The plaintiff's application for a medical marihuana producer's license submitted to Health Canada in September 2013 identified Mr. Chaaban as the plaintiff's President and CEO, and represented that Mr. Chaaban was the plaintiff's sole director and officer. The plaintiff's license application also designated Mr. Chaaban as the plaintiff's "Senior Person in Charge" and "Responsible Person in Charge" under the MMP Regulations. The plaintiff's license application was signed on behalf of the plaintiff by Mr. Chaaban.

9. The plaintiff's application expressly confirmed the plaintiff's understanding, and Mr. Chaaban's understanding, that the application was governed by the MMP Regulations, and that under the MMP Regulations, no license for the production of medical marihuana could be issued or held by the plaintiff unless security clearances were obtained and held by prescribed representatives of the plaintiff, specifically including Mr. Chaaban as a director and officer and as the designated "Senior Person in Charge" and "Responsible Person in Charge". More particularly, the plaintiff's license application signed by Mr. Chaaban:



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- a) specifically recited that valid security clearances were required for all corporate officers and directors as well as for the "Senior Person in Charge" and "Responsible Person in Charge".
- b) accordingly included requests for security clearances for two representatives of the plaintiff, including Mr. Chaaban;
- c) expressly acknowledged that "A producer's license will not be issued if all security clearances required under the [MMP Regulations] have not been granted."
- d) included the following express declaration by Mr. Chaaban further confirming his familiarity with the applicable MMP Regulations and statutes:

"I hererby declare that the proposed Senior Person In Charge ... and proposed Responsible Person in Charge ... are familiar with the provisions of the Controlled Drugs and Substances Act, and its regulations and the Food and Drug Act that will apply to this licence."
- e) further advised that Mr. Chaaban held multiple legal degrees (LL.B., JD, and LL.M.);
- f) additionally represented that three other "key players" in the plaintiff's license application also held legal degrees.

10. Contrary to the allegations in paragraphs 7 – 9 of the statement of claim, the summary outline of the licensing application process referred to in those paragraphs, and reproduced in Schedule A to the statement of claim, while briefly appearing on a Health Canada webpage at a later date, did not appear on Health

Canada's website at any point during the time when the plaintiff was preparing or making its license application, or at any time relevant to the plaintiff's claim in this proceeding. Moreover, and in any event, the plaintiff, and Mr. Chaaban, fully understood throughout their pursuit of the plaintiff's license application that the process for dealing with such applications was governed by the MMP Regulations, and that summary information provided on Health Canada's website could not and did not override the provisions of the MMP Regulations

11. With respect to the last sentence of paragraph 6 of the statement of claim, the defendant admits that the plaintiff's license application purported to indicate that the "maximum quantity" of dried medical marihuana sought to be produced and sold by the plaintiff was 600,000 kg per year, but does not admit that there was any reasonable basis for the plaintiff projecting such massive production or sales volumes of marihuana for medical use. In fact, the proposed facility eventually presented by the plaintiff for physical inspection by Health Canada in 2014 differed very significantly in size, configuration and in security and other attributes from the specific proposals detailed in the plaintiff's license application of September 2013 and elaborated in supplemental materials submitted by the plaintiff in October 2013. In the result, the plaintiff eventually agreed in October, 2014 that, even if the plaintiff were to receive a producer's license in respect of the facility actually presented to Health Canada for inspection in 2014, the maximum production from such facility would have to be limited to just 100 kg of dried marihuana per year.

#### SUBSEQUENT HANDLING OF THE PLAINTIFF'S LICENSE APPLICATION

12. During the subsequent process of Health Canada continuing to review the plaintiff's license application and the steps taken by the plaintiff in relation to advancing its application and actualizing its facility proposals, Health Canada repeatedly re-iterated to the plaintiff and Mr. Chaaban, and they fully understood and accepted, that the plaintiff's license application remained subject, in addition to satisfaction of other requirements, to eventual assessment and decision as to whether Mr. Chaaban would be granted security clearance, and that such matters remained outstanding.

13. Following initial review of the plaintiff's license application materials, Health Canada sent the plaintiff a letter dated November 26, 2013, which is referred to in paragraph 10, of the statement of claim (although the contents of the letter are incorrectly summarized therein).

14. The letter of November 26, 2013 advised that, if the plaintiff proceeded to implement the specific proposals detailed in the plaintiff's license application with respect to various cultivation, storage and security installations, then such installations would be in compliance with the MMP Regulations, including the requirements of Health Canada's *Directive on Physical Security Requirements for Controlled Substances* for a security level 10. As noted in paragraphs 1(f) and 11 above, the plaintiff did not, in fact, proceed to implement the specific facility installation proposals set out in its license application, and instead proceeded to implement significantly different and greatly reduced proposals.

15. Contrary to the plaintiff's claims in this action, Health Canada's letter of November 26, 2013 also specifically advised the plaintiff that, if the plaintiff proceeded to complete its proposed facility installations, approval of a producer's license would still be contingent not only on a physical inspection and verifying compliance with the MMP Regulations, but also on the plaintiff's key personnel receiving the security clearances required under the MMP Regulations. Also contrary to the allegations in the statement of claim, the letter further made clear, and the plaintiff fully understood, that the review and decision making processes with respect to the plaintiff's requests for necessary security clearances for its key personnel remained outstanding.

16. The defendant admits that on December 7, 2013, the plaintiff advised that its proposed facilities, as described in its license application materials, would be completed by April 2014, as pleaded in paragraph 14 of the statement of claim. The defendant expressly denies that any representative of Health Canada subsequently requested that the plaintiff "expedite" construction of its proposed facilities, as alleged in paragraph 15 of the statement of claim, or that the plaintiff actually expedited construction of its proposed facilities. To the contrary, the plaintiff put off proceeding with implementation of the facility proposals contained in its license application, and proceeded instead with putting in place significantly smaller and more limited facility installations than proposed in its application, and took a longer period of time to do so than it projected for completion of the much more extensive facility proposals set out in its license application.

17. On December 30, 2013, a news release was issued on behalf of the plaintiff and its parent company claiming, falsely, that the plaintiff had "received its regulatory approval from Health Canada to become one of Canada's medicinal marijuana growers." Health Canada wrote to the plaintiff and Mr. Chaaban by email dated January 2, 2014 to object to this false claim. Health Canada's email specifically reminded the plaintiff and Mr. Chaaban that Health Canada's letter of November 26, 2013 "does not constitute approval to possess, produce, distribute, export, import, or conduct any other activities with cannabis", and that any subsequent license approval remained subject not only to a satisfactory inspection, but also to the outstanding requirement that "all designated personnel must obtain a security clearance prior to a license being issued."

18. Mr. Chaaban responded on behalf of the plaintiff by email dated January 2, 2014. Contrary to the claims now being asserted in the statement of claim, Mr. Chaaban expressly confirmed his and the plaintiff's understanding that any eventual approval of the plaintiff's license application remained subject to approval of the required security clearances, which included a security clearance for Mr. Chaaban, and that review and decisions with respect to the plaintiff's requests for required security clearances remained outstanding matters.

19. The defendant admits that, as pleaded by the plaintiff in paragraph 20 of the statement of claim, Health Canada wrote to the plaintiff on March 28, 2014 inquiring about the plaintiff's progress with respect to implementing its facility proposals, and once again expressly stipulated that any eventual approval and issuance of a license remained contingent on approval of the security clearances

requested for the plaintiff's representatives, which security clearance process remained outstanding.

20. The defendant further admits that it again wrote to the plaintiff and Mr. Chaaban on July 14, 2014, as pleaded in paragraph 25 of the statement of claim. In addition to inquiring about the readiness of the plaintiff's proposed facilities for inspection, Health Canada re-iterated yet again that any eventual approval of a medical marihuana producer's license was subject both to a satisfactory inspection, and to the plaintiff's representatives being approved for and receiving required security clearances, the requests for which were still in process.

#### SUMMARY OF THE DEFENDANT'S RESPONSE TO THE PLAINTIFF'S CLAIM

21. While the defendant admits that, as events transpired, Mr. Chaaban was ultimately denied a security clearance, and that the plaintiff was denied a medical marihuana producer's license, as previously outlined in paragraph 1(f) above, the defendant denies that Health Canada made any representations, either as alleged in the statement of claim, or at all, to the effect that the plaintiff's representatives, including Mr. Chaaban, would receive security clearances, or that the plaintiff would receive a medical marihuana producer's license.

#### DAMAGES CLAIMS

22. Alternatively, the defendant denies that the defendant relied on, or reasonably relied on, any alleged representations from Health Canada.

- 15 -

23. The defendant further denies that the plaintiff suffered any damages, or any damages recoverable at law, and puts the plaintiff to strict proof thereof.

24. The defendant accordingly requests that this action be dismissed with costs.

December 20, 2016

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Court File No.: CV-16-23260

**CEN BIOTECH INC.**

**AND**

**ATTORNEY GENERAL OF CANADA**

Plaintiff

Defendant

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Windsor

**STATEMENT OF DEFENCE**

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